

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOHN W. BANOS	§	
VS.	§	CIVIL ACTION NO. 1:23cv306
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner John W. Banos, proceeding *pro se*, filed the above-styled petition for writ of error *coram nobis*. The Court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

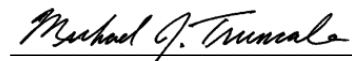
The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the Court is of the opinion the objections are without merit. The Magistrate Judge correctly stated that as petitioner remains in custody as a result of the state court convictions he challenges, he cannot obtain relief by filing a petition for writ of error *coram nobis*.

In his objections, petitioner asks that his filing be considered as a petition for a writ of *audita querela*. However, this writ is only available where the legal objection being raised cannot be brought pursuant to any other post-conviction remedy. *United States v. Banda*, 1 F.3d 354, 356 (5th Cir. 1993). As petitioner's legal objections to his convictions may be asserted in a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, he may not seek relief through a petition for a writ of *audita querela*. *Id.*

ORDER

Accordingly, petitioner's objections [Dkt. 4] are OVERRULED. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge [Dkt. 3] is ADOPTED. A final judgment will be entered in accordance with the recommendation of the Magistrate Judge.

**SIGNED** this 3rd day of October, 2023.

A handwritten signature in black ink, reading "Michael J. Truncala", is written over a horizontal line.

Michael J. Truncala  
United States District Judge